

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

East Tennessee Natural Gas, LLC

Docket No. RP97-13-019

ORDER REJECTING COMPLIANCE FILING

(Issued June 16, 2005)

1. On May 17, 2005, East Tennessee Natural Gas, LLC (East Tennessee) filed a revised letter agreement with Sequent Energy Management, L.P. (Sequent), as successor to NUI Energy Brokers, Inc. (NUI), in order to comply with the Commission's November 26, 2004 Order (November 26, 2004 Order) in Docket No. RP97-13-011.¹ East Tennessee also filed Second Revised Sheet No. 394 to its FERC Gas Tariff, Third Revised Volume No. 1 to reflect the change from NUI to Sequent and a superseding service agreement with Sequent. East Tennessee seeks an effective date of November 21, 2003 for the revised letter agreement and an effective date of May 1, 2005 for the revised tariff sheet and superseding service agreement. As discussed below, the Commission rejects East Tennessee's filing, and directs East Tennessee to refile to comply with the prior Commission orders in this proceeding and to correct the errors discussed in this order. This order benefits customers by ensuring that East Tennessee's tariff properly complies with the Commission's orders.

Background

2. In an October 31, 2003 "Order Accepting Tariff Sheets Subject to Conditions" (October 31, 2003 Order),² the Commission accepted East Tennessee's proposed tariff sheet and the negotiated rate agreements with NUI, Public Service Company of North Carolina (PSNC), NJR Energy Services Company (NJR), Carolina Power & Light Company (CP&L), and Duke Energy Murray, LLC (DENA Murray), subject to conditions, effective the later of

¹ *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232 (2004).

² *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162 (2003).

November 1, 2003, or the in-service-date of the Patriot Project.³ Each negotiated rate agreement was made up of a non-conforming service agreement and a supplemental letter agreement (Letter and Service Agreement). The October 31, 2003 Order found that East Tennessee had failed to adequately comply with the requirements established in the Commission's 2003 modification to its negotiated rate policy.⁴ The 2003 Policy Statement required the pipeline to use the form of service agreement as the starting point in drafting any negotiated rate agreement, clearly delineate differences from the form of service agreement and provide a narrative regarding the differences.⁵ However, the Commission stated that the agreements were entered into before the issuance of the Commission's 2003 Policy Statement. Therefore, the Commission stated that it would not reject East Tennessee's filing. Instead, the October 31, 2003 Order accepted the Letter and Service Agreements, subject to East Tennessee's filing supplemental information that fully complies with the Commission's 2003 Policy Statement.

3. On December 1, 2003, East Tennessee filed with the Commission a revised tariff sheet, letter agreements and other information in compliance with the Commission's October 31, 2003 Order. The Commission's November 26, 2004 Order accepted the December 1, 2003 filing with conditions, and directed East Tennessee to revise and refile three of the letter agreements.⁶ The letter agreement with NUI was one of the three letter agreements to be refiled.⁷ Of relevance here, the Commission required East Tennessee to eliminate a provision in paragraph 1 of the NUI letter agreement that allowed NUI to turn back up to 25,000 Dth per day of the 50,000 Dth per day maximum daily transportation quantity (MDTQ) at the end of the primary term or modify its tariff and form of service agreement to offer this type of provision to all of its customers. The Commission also rejected a

³ On October 10, 2003, in Docket No. CP01-415-000, East Tennessee made a filing requesting approval to place the Patriot Project facilities in service on November 8, 2003.

⁴ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003) (2003 Policy Statement).

⁵ *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162 at P 12-14 (2003).

⁶ *East Tennessee Natural Gas Co.*, 109 FERC ¶ 61,232 (2004).

⁷ The other two contracts were with PSNC and DENA Murray. The Commission accepted PSNC's revised agreement for filing on April 21, 2005 in a letter order issued in this docket. East Tennessee requested clarification or rehearing of the November 26 Order in regard to revising the DENA Murray letter agreement. The Commission granted rehearing on March 8, 2005.

provision in paragraph 11 of the NUI letter agreement that would allow NUI to enter into an Operational Balancing Agreement and directed East Tennessee to remove the provision from the letter agreement.

Instant Filing

4. In the instant filing, East Tennessee states that it has deleted the relevant language of paragraph 1 of the Original Letter Agreement that afforded Sequent the opportunity to turn back a portion of its MDTQ under the service agreement at the end of the Primary Term. East Tennessee also states that it has deleted paragraph 11 of the Original Letter Agreement.

5. East Tennessee also states that it has made other changes to its agreement with Sequent. The Revised Letter Agreement reflects that it now applies to services under two service agreements, one terminating before the other, in order to approximate the result that would have been possible with the turnback provision. East Tennessee states that it has also agreed to different rates, tied to different delivery points, to accommodate a request by Sequent to reposition services with their affiliate, Chattanooga Gas Company. East Tennessee further states that there are minor, miscellaneous modifications throughout that are necessary to identify revised agreements.

6. East Tennessee proposes an effective date for the revised letter agreement of November 21, 2003 and an effective date for the superseding service agreement and tariff sheet of May 1, 2005. East Tennessee requests that the Commission grant waiver of the notice requirement contained in section 154.207⁸ of the Commission's regulations and any other required waivers necessary to accept the revised letter agreement and make effective the superseding service agreement and tariff sheet on the proposed dates.

Notice and Comments

7. Notice of East Tennessee's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 30,429 (2005), with protests due on or before May 31, 2005. East Tennessee Group (ETG) filed a protest on May 31, 2005. East Tennessee filed a motion for leave to answer and answer of East Tennessee to protest of ETG on June 8, 2005. Sequent filed an out of time motion for leave to intervene on June 9, 2005.

⁸ 18 C.F.R. § 154.207 (2004).

8. ETG protests the filed negotiated rate letter agreement and the two related FT-A service agreements, one of which ETG states was not included in the compliance filing, on the grounds that they are inconsistent with East Tennessee's tariff, prior Commission orders in these proceedings, and the Commission's 2003 Policy Statement. ETG states that the arrangements with Sequent, primarily the amount of the maximum daily delivery obligation and the maximum daily receipt obligation which exceeds the MDTQ, pose a risk of undue discrimination against its members and would result in a degradation of the quality of service currently provided to them.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits answers to protests or answers unless otherwise ordered by the decisional authority. We are not persuaded to accept East Tennessee's out of time answer to ETG's protest and will, therefore, reject it.

10. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, we grant the out of time motion to intervene of Sequent, given its relatively short delay in seeking to intervene once it became a successor to the subject service agreement with NUI, and given the fact that, at this early stage of this proceeding, granting the motion to intervene should result in no undue prejudice or delay.

Discussion

11. The Commission rejects East Tennessee's May 17, 2005 compliance filing. Section 154.203(b) of the Commission's regulations provides that filings made to comply with Commission orders must include only those changes required to comply with the order.⁹ The regulation further provides that compliance filings may not be combined with other rate or tariff changes, and compliance filings that include other changes or that do not comply with the applicable order in every respect may be rejected. The Commission finds that East Tennessee has made changes to the agreement with Sequent which were not required by the November 26, 2004 Order and which therefore violate the Commission's regulations, and which fail to comply with the November 26, 2004 Order. It must separately file changes, beyond those directed by the Commission, in a separate filing pursuant to section 4 of the Natural Gas Act if it wishes those revised non-conforming contracts to become effective.

⁹ 18 C.F.R. § 154.203(b) (2004).

The Commission orders:

(A) East Tennessee's compliance filing is rejected.

(B) East Tennessee must file a corrected compliance filing within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.